

Message Text

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USOECD

FOLLOWING REPEAT BRUSSELS 04043 SENT ACTION SECSTATE MAR 01.
QUOTE LIMITED OFFICIAL USE BRUSSELS 04043

USEEC

PASS CEQ FOR TOXIC SUBSTANCES STRATEGY COMMITTEE

E.O. 11652: N/A
TAGS: SENV, EEC
SUBJ: US/EC COOPERATION ON CONTROL OF TOXIC SUBSTANCES:
A POLICY PROPOSAL

REFS: (A) BRUSSELS 1601; (B) 77 BRUSSELS 14548; (C) 77
BRUSSELS 13888; (D) 77 STATE 302720

1. SUMMARY AND RECOMMENDATION:

THE MISSION RECOMMENDS THAT INTERESTED USG AGENCIES
CONSIDER THE DESIRABILITY OF A BILATERAL AGREEMENT WITH
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THE EUROPEAN COMMUNITIES ON PREMANUFACTURING AND PRE-
MARKETING NOTIFICATION PROCEDURES FOR NEW CHEMICALS.
RECENT DISCUSSIONS BETWEEN THE US AND THE EC ON CONTROL OF
TOXIC SUBSTANCES INDICATE THAT THE TECHNICAL BASIS
EXISTS FOR SUCH AN AGREEMENT. BECAUSE OF THE COINCIDENCE
OF THE STATUS OF OUR RESPECTIVE PROGRAMS WE HAVE A
UNIQUE OPPORTUNITY TO HARMONIZE PROCEDURES, THUS

IMPROVING TRADE RELATIONS BY AVOIDING ESTABLISHMENT OF NEW BARRIERS. A BILATERAL AGREEMENT IN THIS LIMITED FIELD WOULD NOT HINDER OTHER LONGER TERM EFFORTS TO NEGOTIATE A MULTILATERAL AGREEMENT ON A WIDER RANGE OF QUESTIONS CONCERNED WITH TOXIC SUBSTANCES CONTROL AND IN FACT MIGHT BE HELPFUL IN IDENTIFYING POTENTIAL PROBLEM AREAS. WE RECOMMEND ASSISTANT SECRETARY MINK EXPLORE MATTER FURTHER WITH EC OFFICIALS HERE ON APRIL 10.
END SUMMARY.

2. THE EC HAS COMPETENCE IN THE AREA OF REGULATION OF DANGEROUS SUBSTANCES IN THE MEMBER STATES. WHILE MEMBER STATES RETAIN THE RIGHT TO REGULATE INTERNALLY MANY ASPECTS OF TOXIC SUBSTANCES CONTROL, THE COMMUNITY HAS SOLE COMPETENCE EXTERNALLY. THE COMMUNITIES' COMPETENCE IN ENVIRONMENTAL MATTERS IS BASED ON ARTICLES 100 AND 235 OF THE EEC TREATY. IN THE FIELD OF DANGEROUS SUBSTANCES, THIS POWER HAS BEEN EXERCISED BOTH INTERNALLY AS IN THE 27 JUNE 1967 DIRECTIVE ON THE APPROXIMATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO THE CLASSIFICATION, PACKAGING AND LABELLING OF DANGEROUS PREPARATIONS, AS AMENDED, AND ALSO IN REGULATIONS ON SPECIFIC SUBSTANCES (I.E., PCB 76/403/EEC 6 APRIL 1976; DISCHARGE OF DANGEROUS SUBSTANCES 76/464/EEC 4 MAY 1976) AND EXTERNALLY, AS IN THE CONVENTION AGAINST POLLUTION OF THE RHINE. THE EUROPEAN COURT OF JUSTICES' OPINION OF LIMITED OFFICIAL USE

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26 APRIL 1977 (OJ-C107 3.5.77) SANCTIONS THIS PARALLEL EXERCISE OF POWER INTERNALLY AND EXTERNALLY. THE COURT DECIDED IN THE CLASSIC AETR CASE (22/70) THAT IN FIELDS COVERED BY COMMUNITY LEGISLATION THE COMMUNITIES' EXTERNAL POWERS ARE EXCLUSIVE AND MEMBER STATES NO LONGER HAVE THE POWER COLLECTIVELY OR INDIVIDUALLY TO ENTER INTO INTERNATIONAL AGREEMENTS COVERING THE SAME FIELD. THE COURT FURTHER CLARIFIED THE POSITION OF MEMBER STATES IN ITS RULINGS ON CASES 3,4/ AND 6/76 (JULY 14, 1976), WHEN IT STATED THAT MEMBER STATES MUST NOT UNDERTAKE COMMITMENTS LIKELY TO HINDER THE SUBSEQUENT CONCLUSION OF AGREEMENTS BY THE COMMUNITY IN FIELDS WHERE COMMUNITY ACTION IS CONTEMPLATED UNDER ACTION PROGRAMS ADOPTED BY THE EC COUNCIL. ALTHOUGH THE COMMUNITY ACTION PROGRAMS FOR BOTH THE ENVIRONMENT AND CONSUMER AFFAIRS ALREADY CONTAIN LANGUAGE WHICH COULD AND, ACCORDING TO COMMISSION SOURCES, WOULD BE USED TO PREVENT ANY MEMBER STATE ACTION INVOLVING INTERNATIONAL AGREEMENTS ON TOXIC SUBSTANCES, COMMISSION OFFICIALS HAVE EXPRESSED THEIR INTENTION TO REQUEST A SPECIFIC MANDATE FROM THE COUNCIL COVERING REGULATION OF DANGEROUS SUBSTANCES.

3. WITHIN THE NEXT SIX MONTHS, BOTH THE US AND EC WILL BE DEVELOPING PROCEDURES RELATING TO NEW CHEMICALS. THIS COINCIDENCE IN THE STATUS OF OUR RESPECTIVE PROGRAMS OFFERS A UNIQUE OPPORTUNITY TO ESTABLISH THE BASIS FOR MUTUAL RECOGNITION OF BASIC DOSSIERS, THE FIRST AND KEY STEP TOWARDS HARMONIZATION. FAILURE TO TAKE ADVANTAGE OF THIS WINDOW ON THE FUTURE, IN OUR JUDGMENT, WOULD BE UNFORTUNATE AND COULD REQUIRE LEGISLATIVE CHANGES THAT WOULD BE BOTH COSTLY AND WASTEFUL IF THE US SHOULD DECIDE AT SOME LATER POINT TO CONCLUDE EITHER AN INTERNATIONAL OR BILATERAL AGREEMENT ON CONTROL OF TOXIC SUBSTANCES.

4. THE MISSION IS AWARE OF THE EFFORTS BEING MADE IN OECD AND OTHER GROUPS TO ADDRESS QUESTIONS OF TOXIC SUBSTANCES LIMITED OFFICIAL USE

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WITH EYE ULTIMATELY TO NEGOTIATE A MULTILATERAL AGREEMENT. EC COMMISSION OFFICIALS ARE PARTICIPATING IN THE ACTIVITIES OF THE OECD CHEMICALS GROUP AND WILL TAKE PART IN THE APRIL STOCKHOLM MEETING. WE SEE NO INCONSISTENCY IN THE IDEA OF A BILATERAL US/EC AGREEMENT, WHICH WE BELIEVE COULD BE REACHED FAIRLY QUICKLY, AND WOULD NOT HINDER ONE OR BOTH PARTIES FROM ULTIMATELY JOINING IN A MULTILATERAL CONVENTION. A BILATERAL NEGOTIATION COULD PROVIDE THE US WITH AN INDICATION OF THE TYPES OF NECESSARY COMPROMISES, THE CONCERNS OF BOTH DOMESTIC AND FOREIGN MANUFACTURERS AND THE POLITICAL DEMANDS WHICH WOULD HAVE TO BE DEALT WITH BEFORE A MULTILATERAL AGREEMENT COULD BE CONCLUDED.

5. AS WE SEE IT, THE FOLLOWING ARE SOME OF THE ISSUES WHICH WILL HAVE TO BE ADDRESSED WITH THE EC:

A. AS CONCLUDED AT THE US/EC CONSULTATIONS ON TOXIC SUBSTANCES, AGREEMENT ON THE FOLLOWING ELEMENTS WOULD BE ESSENTIAL FOR HARMONIZATION: MUTUAL RECOGNITION OF THE DOSSIER; TEST METHODOLOGY, ACCREDITATION OF LABORATORIES AND DATA; MEANS OF QUALITY ASSURANCE; A FRAMEWORK FOR ASSESSMENT PROCEDURES, CONFIDENTIALITY, PRIORITY LISTING, AND COST SHARING.

B. THE USG WOULD HAVE TO DECIDE THAT IT IS WILLING TO ACCEPT EITHER EC CERTIFICATION OF LABORATORIES AND DATA, OR MUTUAL INSPECTION OF LABORATORIES.

C. THE USG WOULD ALSO HAVE TO SETTLE ON A SET OF STANDARDS WHICH REALISTICALLY REFLECT THE ECONOMIC CONSEQUENCES OF REGULATION.

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D. BECAUSE OF DIFFERING STRUCTURAL, GEOGRAPHIC, CULTURAL, AND POLITICAL PRIORITIES BETWEEN THE US AND EC, RISK-BENEFIT ANALYSIS WILL UNDOUBTEDLY PRODUCE DIFFERENT DECISIONS. A METHOD OF ACCEPTABLE RECONCILIATION WILL HAVE TO BE DEVELOPED.

6. AN AGREEMENT WITH THE FC IS CONSISTENT WITH THE PRESIDENT'S MESSAGE ON THE ENVIRONMENT, WHICH NOTES THE INTERDEPENDENCE OF THE GLOBAL ENVIRONMENT AND CHARGES CEQ AND THE DEPARTMENT OF STATE WITH ACHIEVING THE BEST POSSIBLE COORDINATION OF THE INTERNATIONAL ENVIRONMENTAL PROGRAMS. TSCA REQUIRES THAT THE INTERNATIONAL EFFECTS BE CONSIDERED IN FORMULATION AND ADOPTION OF REGULATIONS. HARMONIZATION WOULD ALSO SUPPORT US TRADE POLICY IN THAT IT WOULD PREVENT THE IMPLEMENTATION OF DIFFERING STANDARDS IN THE US AND EUROPE WHICH COULD FUNCTION AS NON-TARIFF BARRIERS TO TRADE. FINALLY, IT IS CONSISTENT WITH THE PRESIDENT'S BASIC POLICY TOWARD THE COMMUNITY: WHEN THE PRESIDENT'S BASIC POLICY TOWARD THE COMMUNITY: WHEN THE EUROPEANS ARE PREPARED TO ACT TOGETHER WE ARE PREPARED TO DEAL WITH THEM AS A SINGLE ENTITY.

7. IN THE EVENT THE US DECIDED TO NEGOTIATE AN US/EC UNDERSTANDING COVERING THE PROTOCOLS FOR PREMANUFACTURING AND PREMARKETING NOTIFICATION, IT SHOULD BE CLEARLY UNDERSTOOD THAT SUCH AN AGREEMENT IN NO WAY COMMITS THE US TO A PURELY BILATERAL COURSE. THE MISSION BELIEVES THAT A MULTILATERAL CONVENTION WOULD ULTIMATELY BE PREFERABLE TO A SERIES OF BILATERALS ON TOXIC SUBSTANCES IF REASONABLE STANDARDS AND METHODS CAN BE AGREED UPON WITHIN A REASONABLE TIME PERIOD.

8. SHOULD INTERESTED WASHINGTON AGENCIES AGREE THAT PROPOSAL MERITS FURTHER EXAMINATION, WE RECOMMEND THAT ASSISTANT SECRETARY MINK TAKE THE OPPORTUNITY OF HER APRIL 10 DISCUSSIONS HERE WITH EC OFFICIALS TO INITIATE LIMITED OFFICIAL USE

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CONVERSATIONS ALONG THFSE LINES. REQUEST WASHINGTON REACTION AND GUIDANCE. HINTON UNQUOTE VANCE

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